The principal case is quite distinct from the class of cases which allow damages as incidental relief when equitable relief is also given. *Reese* v. *Holmes,* 5 Rich. Eq. (S. C.) 531; *Garrish* v. *German Ins. Co.,* 55 N. H. 355; *Tayloe* v. *Merchants Fire Ins. Co.,* 9 How. (U. S.) 390, 13 L. Ed. 187. The weight of authority is that if the plaintiff, at the time of asking for equitable relief, knew that such relief could not be granted or knew that the facts warranted only legal relief, the court will not retain the case for the giving of damages. *Linden Inv. Co.* v. *Honstain Bros. Co.,* 221 Fed. 178, 136 C. C. A. 121; *Elliott* v. *Page,* 98 S. C. 400, 82 S. E. 620; *Farson* v. *Fogg,* 205 Ill. 326, 68 N. E. 755; *Knudtson* v. *Robinson,* 18 N. D. 12, 118 N. W. 1051. This represents the better rule in both code and common law jurisdictions and under the Federal Equity Rules of 1912. There are other cases, however, in accord with the principal case. *Knauf & Tesch Co.* v. *Elkhart &c. Co.,* 153 Wis. 306, 141 N. W. 701, 48 L. R. A. N. S. 744; *Amsler* v. *McClure,* 238 Pa. St. 409, 86 Atl. 294 (statutory). Upon principle, the weight of authority seems to be the better rule. Equity does not sit for the purpose of entertaining bills whose only object is to secure damages. This is a peculiar function of the law courts sitting with a jury. Even the various Codes of Civil Procedure, while they purport to abolish the difference between actions in law and in equity, ought not to be interpreted so as practically to abolish the trial by jury in cases in which damages only can be recovered and the controversy is clearly legal.

SPECIFIC PERFORMANCE — INADEQUACY OF CONSIDERATION. — The plaintiff's intestate agreed to sell property worth $8,000 to the defendant for $2,000. The defendant went into possession and paid the plaintiff's intestate a small portion of the purchase price monthly, a sum less than the rental value of the premises. The parties were cousins by marriage. Upon the death of the intestate, the plaintiff, as administrator, refused to accept the regular payments and brought an action in ejectment to recover possession of the premises. The defendant in a cross complaint asked for specific performance of the contract. *Held,* that this relief should be denied and that the plaintiff should succeed in his action of ejectment. *O'Hara* v. *Lynch* (Cal. 1916), 157 Pac. 608.

The decision in the principal case would seem to be clearly governed by § 3391 (1) of the CIV. CODE which provides that specific performance cannot be enforced against a party "if he has not received an adequate consideration for the contract." There are similar code provisions in Montana and South Dakota. The court held that, while the consideration of love and affection might be considered as part of the consideration, still it could not be considered as sufficient to make the total consideration adequate in this case. The overwhelming weight of authority in absence of such statutes is that inadequacy of consideration, unaccompanied by any fraud, mistake or unfairness is not ground for denying specific performance. *Coles* v. *Trecothick,* 1 Smith K. B. 233, 9 Ves. Jr. 244, 246, 7 Rev. Rep. 167, 32 Eng. Reprint 592; *Ketcham* v. *Owen,* 55 N. J. Eq. 344, 36 Atl. 1095; *Seymour* v. *Delancy,* 3 Cow. 445, 15 Am. Dec. 270. There are cases however to the contrary:

Dodd v. *Seymour,* 21 Conn. 475; *Clement* v. *Reid,* 9 Sm. & M. 535 (Miss.). The rule laid down by Lord ELDON in the leading case of *Coles* v. *Trecothick* is that inadequacy of consideration, in order to be ground for denying specific performance, must be such "as shocks the conscience and amounts to conclusive and decisive evidence of fraud." This rule was criticized by Chancellor KENT in *Seymour* v. *Delancy,* in which all the Justices voted with the Chancellor and were overruled by a vote of the Senators. The opinion of the Chancellor is entitled to very great weight. His argument was that equity will never enforce a bargain which involves great hardship. This is a well settled principle of equity. *Williamson* v. *Dels,* 114 Ky. 962, 72 S. W. 292; *Bates Co.* v. *Bates,* 87 Ill. App. 225. The hardship of an inadequate price is just as much of a hardship as that of a forfeiture. But the courts have, in following Lord ELDON'S famous words, made an apparent exception of a hardship resulting from mere inadequacy of price. In effect, they have said they will enforce contracts in which the hardship is inadequacy of price but in all other cases will not enforce contracts involving great hardship on the defendant. Comparatively few courts have followed the reasoning of Chancellor KENT and the only remedy seems to be a statutory one.